

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,) CASE NO. 1:18-cv-00413-MRB
)
v.)
)
)
TOTAL MAINTENANCE SOLUTIONS, INC.,)
)
Defendant.)
)

CONSENT DECREE

The Equal Employment Opportunity Commission (“EEOC”) initiated this action under the authority granted to it under Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e-5(f)(1). The EEOC’s action was brought to correct alleged unlawful employment practices on the basis of sex. Specifically, the EEOC alleged in its Complaint that Total Maintenance Solutions, Inc. (“Total Maintenance”) subjected Aaliyah Thomas (“Ms. Thomas”) to sexual harassment and retaliation in violation of Title VII.

The EEOC and Total Maintenance hereby stipulate to the jurisdiction of the Court over the parties and the subject matter of this action.

The parties have advised the Court that they desire to resolve the remaining allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made on the pleadings and the record that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 18 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. Total Maintenance, along with its officers, agents, successors, and other persons in active concert or participation with Total Maintenance in its business operations, is permanently enjoined from subjecting its employees to sexual harassment.
2. By entering into this Decree, Total Maintenance does not admit liability in this action generally or to Ms. Thomas specifically and in fact specifically denies any and all such liability.
3. Total Maintenance shall not discriminate or retaliate in any way against any person because of opposition to any practice made unlawful under Title VII, or because of the filing of a charge, the giving of testimony, assistance, or participation in any manner in an investigation, proceeding or hearing under Title VII.
4. This Decree does not affect the Commission's right to file suit based on charges pending at the administrative level or on any subsequently filed charges even if those charges allege violations occurring prior to the entry of this Decree.
5. With the execution of this decree, Total Maintenance shall pay the total sum

of Twenty-Two Thousand and Five Hundred Dollars (\$22,500.00) to Aaliyah Thomas in three separate installments in the amounts and by the dates shown as follows:

First payment: Ten Thousand One Hundred Ninety-Three Dollars and Sixty-Four Cents (\$10,193.64), to be paid within 15 days of the entry of the Consent Decree by the Court;

Second payment: Six Thousand One Hundred Fifty-Three Dollars and Eighteen Cents (\$6,153.18), to be paid on or before August 15, 2021;

Third payment: Six Thousand One Hundred Fifty-Three Dollars and Eighteen Cents (\$6,153.18), to be paid on or before November 15, 2021.

Ten Thousand One Hundred Ninety-Three Dollars and Sixty-Four Cents (\$10,193.64) of the total amount shall be allocated as wages (from which appropriate withholdings and deductions will be made) and the remainder shall be treated as compensatory damage and reported on IRS Form 1099.

Total Maintenance shall make applicable withholdings from the back pay award for federal, state and local income taxes, and for employee social security taxes pursuant to the Federal Insurance Contribution Act (“FICA”), and Total Maintenance shall make and be responsible for paying its employer share of any costs, taxes, or social security required by law to be paid by Total Maintenance. Total Maintenance shall provide with Ms. Thomas’s back paycheck a statement detailing all deductions it makes. The checks shall be mailed by certified mail to Aaliyah Thomas, at a mailing address to be provided by the EEOC.

Within fifteen days of the mailing of the checks, Total Maintenance shall serve a copy of Ms. Thomas's checks and proof of their delivery to Ms. Thomas (via signed certified mail receipts) to EEOC Indianapolis District Consent Decree Monitoring Team ("EEOC INDO Monitoring") via electronic mail to Monitoring-eeoc-INDO@eeoc.gov.

6. No later than five days after the date of entry of this decree, Total Maintenance shall post the Notice of Non-Discrimination Policy attached as Appendix A to this decree in a conspicuous location visible to all applicants and employees in all facilities owned by Total Maintenance. Said notice shall remain posted throughout the term of this Decree.

7. Within 45 days of the date of entry of this decree, Total Maintenance shall implement an improved anti-discrimination and anti-harassment policy, which shall follow the parameters designated in Appendix B.

a. Total Maintenance shall revise its policy and complaint procedure as provided in this Decree and will include it in its employee manual or other printed memorandum to be distributed individually to all employees within 45 days of entry of the decree.

b. Total Maintenance will provide the anti-discrimination/harassment policy and complaint procedure to new employees upon hire.

c. Total Maintenance shall separately explain this policy and complaint procedure to each employee at the time he or she receives a written copy.

d. Within 45 days of entry of the decree, Total Maintenance will post at

prominent and accessible places in all of its facilities a summary of its anti-discrimination/harassment policy and complaint procedure. The summary will also indicate how employees can obtain a hard copy of the complete policy and complaint procedure.

e. No later than 30 days before it implements this policy and procedure, Total Maintenance shall provide a copy of its written policy and procedure to the EEOC. The EEOC may provide reasonable input on the content of this policy and procedure and the identification of any deficiencies.

8. Total Maintenance shall conduct one, four-hour training seminar for all full-time employees, including all supervisors and managers, regarding Title VII and Total Maintenance's anti-discrimination/harassment and complaint procedures, including the handling of employee complaints of sexual harassment. The Title VII portion of this training shall cover: (a) the record-keeping obligations of Title VII; and (b) what constitutes sexual harassment and retaliation. The training must be conducted within 180 days from the date of entry of this decree and will be repeated for all supervisors and managers annually thereafter for the duration of this decree. No less than 30 days before each training session, Total Maintenance shall provide notice to the EEOC of the date, time, and place of the training, and shall send to the EEOC a copy of the training program and all written materials, if any, to be used. The EEOC may provide reasonable input on the content of the training but shall do so no later than ten days prior to the training. This training shall be provided at Total Maintenance's expense by an outside consultant experienced in the area of

Title VII and sexual-harassment prevention.

9. Within 60 days of the date of this Decree, Total Maintenance will certify to the EEOC Regional Attorney that the distribution and explanation of the policy/complaint procedure has been completed and provide the EEOC with a copy of the personnel manual or memorandum containing the policy prohibiting sexual harassment. Total Maintenance further shall submit a report to the EEOC within 30 days of its completion of the training described in paragraph 8 above. Said report shall include the date the training took place and a list of all those employees who attended the training.

10. In addition, three annual reports shall be submitted during the term of this decree. The first report shall be due on December 31, 2021 and the subsequent reports shall be mailed to the EEOC no later than December 31st of each year covered by the decree. The report shall include the following information for the twelve (12) month period preceding the report: a description of verbal or written complaints of sexual harassment received by the company or any of its managers or supervisors from any employee, the name and position of the complainant and the disposition of the complaint, including any discipline administered as a result of the complaint, and all records concerning complaints received by the designated outside contact for receiving harassment complaints. Defendant shall serve all certifications and reports to EEOC Indianapolis District Consent Decree Monitoring Team (“EEOC INDO Monitoring”) via electronic mail to Monitoring-eeoc-INDO@eeoc.gov.

11. The EEOC may review compliance with this decree. As part of such

review, the EEOC may inspect the premises upon reasonable notice and during normal business hours, interview employees, and examine and copy documents.

12. The EEOC may petition this Court for compliance with this Decree at any time during which this Court maintains jurisdiction over this action. Should the Court determine that Total Maintenance has not complied with this Decree, appropriate relief, including monetary sanctions and/or extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered.

13. Prior to initiating an action to enforce the Decree, EEOC shall provide written notice to Total Maintenance of the nature of the dispute. This notice shall specify the provision(s) believed to have been breached and a statement of the issues in dispute. The notice may also include a reasonable request for documents or information relevant to the dispute. Within fifteen (15) business days after service of the Notice of Dispute, Total Maintenance will provide the EEOC a written response and provide the requested documents or information. If the dispute has not been resolved within thirty (30) days after service of the Notice of Dispute, an action to enforce the Decree may be brought in this Court. The provisions of this section do not prevent the EEOC from bringing an issue before the Court when the facts and circumstances require immediate Court action. EEOC's moving papers shall explain the facts and circumstances that necessitate immediate Court action.

15. The term of this decree shall be for 3 years following the date of the entry of this decree.

16. The EEOC and Total Maintenance will bear their own costs and

attorney fees.

17. The Consent Decree shall bind any subsequent successor, purchaser, assignor or transferee of Total Maintenance. Total Maintenance will provide prior written notice to any potential purchaser of Defendant's business, or purchaser of all or a portion of Defendant's assets, and to any other potential successor, of this lawsuit, the allegations raised in the Commission's complaint, and the existence and contents of this Consent Decree. Total Maintenance shall provide notice to the EEOC of a potential sale of the company within sixty days of the sale.

18. RETENTION OF JURISDICTION BY COURT. The Court will retain jurisdiction of this cause throughout the duration of this decree for purposes of monitoring compliance with this decree and entry of such further orders as may be necessary or appropriate.

June 7, 2021

/s/ Michael R. Barrett

Date

Judge, United States District Court

Copies to:

Counsel of Record

APPENDIX A

EMPLOYEE NOTICE

This Notice is being distributed and posted pursuant to the Court's ordered Consent Decree between Total Maintenance, Inc., and the United States Equal Employment Opportunity Commission ("EEOC").

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (over 40), disability, or genetics.

Federal law also prohibits sexual harassment in the workplace. Sexual harassment in the workplace occurs when the employer allows its employees to be subjected to verbal or physical conduct of a sexual nature and this conduct interferes with the employee's work or creates an intimidating or offensive work environment. Sexual harassment also occurs when an employer conditions an employee's continued employment upon the return of sexual favors or attention. Total Maintenance employees are expected to personally ensure that they do not engage in sexual harassment in the workplace.

Any employee who feels subjected to discrimination or harassment of any kind should immediately report it to his/her manager or supervisor. If the employee feels uncomfortable reporting a complaint of discrimination to his/her manager or supervisor, for any reason, the employee may report the alleged discrimination to any member of management. If the person towards whom the complaint is directed is a member of management or ownership, the employee should contact TMS' outside counsel, Curtis L. Cornett, at (513) 852-8226 or clc@corsbassett.com. All such reports will be investigated thoroughly and, if the report has merit, disciplinary action up to and including discharge will be taken against the offender.

Total Maintenance supports and will comply with such Federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U. S. Equal Employment Opportunity Commission.

An employee has the right to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission

600 Dr. Martin Luther King, Jr. Pl., Suite 268,

Louisville, KY 40202, (502) 582-5437

Toll Free # 1-800-669-4000

TDD (317) 226-4162

APPENDIX B

HARASSMENT POLICIES AND COMPLAINT PROCEDURES

Total Maintenance will revise written anti-discrimination/harassment policies and procedures prohibiting discrimination and harassment and prohibiting retaliation for complaining about, reporting, or otherwise opposing such harassment and including a comprehensive complaint procedure. These policies and procedures for reporting and investigating incidents of alleged harassment will also apply to incidents of alleged retaliation. The policies and procedures will state that they have been promulgated at the direction of Total Maintenance's owner and are expressly endorsed by management. The policies and procedures should be easily understood and should include at a minimum the following:

1. Clear definitions of all bases for harassment and retaliation, with examples where appropriate.
2. Statements prohibiting discrimination/harassment and retaliation.
3. A statement encouraging employees to report incidents of discrimination/harassment.
4. Convenient, confidential, and reliable mechanisms for reporting incidents of harassment.
5. A statement that reports of harassment can be made to any supervisory or managerial employee.
6. Complaint Procedure: If the person toward whom a complaint is directed is a supervisor, member of management or the President/Owner, the employee should contact TMS' outside counsel, currently Curtis L. Cornett, at 513-852-8226 or clc@corsbassett.com. Outside counsel, within five business days, will then contact an independent employment attorney in the Greater Cincinnati area who does not represent TMS and who shall, within five business days, commence an investigation into the employee's complaint. If outside counsel for TMS should change, the Company shall identify, within five business days of the change, new outside counsel responsible for receiving and forwarding the complaint to the independent employment attorney.
7. A statement that reports of harassment can be made orally or in writing.
8. A requirement that any supervisory/managerial employee who observes or

otherwise obtains information regarding harassment report such information to the individual designated to investigate all complaints of harassment.

9. A requirement that when information from any source is received by a supervisory/ managerial employee indicating that harassment may have occurred, Total Maintenance will conduct a complete investigation of the possible harassment.
10. A statement that all individuals contacted in the course of an harassment investigation will be assured that no form of retaliation or reprisal against an individual who reported, provided information regarding, or was the alleged target of harassment will be tolerated and that any such retaliation or reprisal will result in serious disciplinary action, including discharge.
11. A reasonable timetable for the commencement and completion of harassment investigations.
12. A requirement that harassment investigations be conducted in a discrete manner that does not embarrass or intimidate the alleged targeted individual or any other person contacted during the investigation.
13. A requirement that written findings of the results of each harassment investigation be prepared.
14. A requirement that appropriate remedial action be taken upon conclusion of an investigation.
15. A requirement that the results of each harassment investigation, including any remedial or disciplinary action proposed or taken, will be formally communicated to the individual(s) reporting the harassment and to the target of the alleged harassment.
16. A requirement that all information related to a harassment investigation will be retained in a designated file.
17. A requirement that any individual who engages in prohibited harassment, fails to cooperate in any harassment investigation, or retaliates against a person who reports or complains about harassment or participates in a harassment investigation will be appropriately disciplined and that a record of such discipline will be placed permanently in the individual's personnel file.